

3385

2009-2010 Regular Sessions

I N S E N A T E

March 18, 2009

Introduced by Sen. NOZZOLIO -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the public service law, in relation to directing the public service commission to conduct an in-depth public interest analysis of proposed mergers by telephone corporations and other telecommunications services providers over which said commission has jurisdiction

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative findings and purpose. The legislature finds  
2 the public interest to require closer scrutiny of proposed telecommuni-  
3 cations industry transfers of control, and declares that, except where  
4 the public interest requires a contrary result, a portion of the bene-  
5 fits of such mergers should be returned to the state's ratepayers.  
6 S 2. Subdivision 2 of section 99 of the public service law, as amended  
7 by chapter 383 of the laws of 1996, is amended to read as follows:  
8 2. (A) No franchise nor any right to or under any franchise to own or  
9 operate a telegraph line or telephone line shall be assigned, trans-  
10 ferred, or leased, nor shall any contract or agreement hereafter made  
11 with reference to or affecting any such franchise or right be valid or  
12 of any force or effect whatsoever[, ] unless the assignment, transfer,  
13 lease, contract, or agreement shall have been approved by the commis-  
14 sion.  
15 (B) No telephone corporation shall transfer or lease its works or  
16 system or any part of such works or system to any other person or corpo-  
17 ration or contract for the operation of its works or system[, ] without  
18 the written consent of the commission. [Notwithstanding the foregoing,  
19 any such transfer or lease between affiliated corporations with an  
20 original cost of (a) less than one hundred thousand dollars proposed by  
21 a telephone corporation having annual gross revenues in excess of two

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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1 hundred million dollars, (b) less than twenty-five thousand dollars  
2 proposed by a telephone corporation having annual gross revenues of less  
3 than two hundred million but more than ten million dollars or (c) less  
4 than ten thousand dollars proposed by a telephone corporation having  
5 annual gross revenues of less than ten million dollars and any other  
6 transfer or lease between non-affiliates regardless of cost shall be  
7 effective without the commission's written consent within ninety days  
8 after such corporation notifies the commission that it plans to complete  
9 such transfer or lease and submits a description of the transfer or  
10 lease, unless the commission, or its designee, determines within such  
11 ninety days that the public interest requires the commission's review  
12 and written consent.]

13 (C) (1) NO CONSENT SHALL BE GIVEN BY THE COMMISSION TO THE ASSIGNMENT,  
14 TRANSFER, OR LEASE OF ANY RIGHT OR FRANCHISE TO OPERATE A TELEGRAPH LINE  
15 OR TELEPHONE LINE UNLESS IT SHALL HAVE BEEN SHOWN THAT SUCH ASSIGNMENT,  
16 TRANSFER, OR LEASE IS IN THE PUBLIC INTEREST.

17 (2) NO CONSENT SHALL BE GIVEN BY THE COMMISSION TO THE ASSIGNMENT,  
18 TRANSFER, OR LEASE OF ANY RIGHT OR FRANCHISE TO OPERATE ANY PART OF A  
19 TELEPHONE CORPORATION'S WORKS OR SYSTEM, OR TO A CONTRACT FOR THE OPERA-  
20 TION OF SUCH ENTITY'S WORKS OR SYSTEM, UNLESS IT SHALL HAVE BEEN SHOWN  
21 THAT SUCH ASSIGNMENT, TRANSFER, OR LEASE OR CONTRACT IS IN THE PUBLIC  
22 INTEREST.

23 (D) BEFORE AUTHORIZING THE MERGER, ACQUISITION, ASSIGNMENT, LEASE, OR  
24 TRANSFER OF CONTROL OF ANY TELEPHONE CORPORATION ORGANIZED AND DOING  
25 BUSINESS IN THIS STATE, WHERE ANY OF THE ENTITIES THAT ARE PARTIES TO  
26 THE PROPOSED TRANSACTION HAS GROSS ANNUAL NEW YORK REVENUES EXCEEDING  
27 TWO HUNDRED MILLION DOLLARS, THE COMMISSION SHALL FIND THAT THE PROPOSAL  
28 DOES ALL OF THE FOLLOWING:

29 (1) PROVIDES SHORT-TERM AND LONG-TERM ECONOMIC BENEFITS TO RATEPAYERS.

30 (2) EQUITABLY ALLOCATES, WHERE THE COMMISSION HAS RATEMAKING AUTHORI-  
31 TY, THE TOTAL SHORT-TERM AND LONG-TERM FORECASTED ECONOMIC BENEFITS, AS  
32 DETERMINED BY THE COMMISSION, OF THE PROPOSED MERGER, ACQUISITION, OR  
33 CONTROL BETWEEN SHAREHOLDERS AND RATEPAYERS. RATEPAYERS SHALL RECEIVE  
34 NOT LESS THAN FORTY PERCENT OF SUCH BENEFITS.

35 (3) MAINTAINS OR IMPROVES THE FINANCIAL CONDITION OF THE RESULTING  
36 TELEPHONE CORPORATIONS DOING BUSINESS IN THE STATE AND DOES NOT UNREA-  
37 SONABLY ALLOCATE A TELEPHONE CORPORATION'S DEBT TO A DIVESTITURE ENTITY  
38 CREATED FROM AN EXISTING TELEPHONE CORPORATION. FOR THE PURPOSE OF THIS  
39 SECTION, A DIVESTITURE ENTITY IS A BUSINESS ENTITY CREATED BY THE  
40 ASSIGNMENT, EXCHANGE, SALE, OR OTHER TRANSFER OF SOME OR ALL OF AN  
41 EXISTING TELEPHONE CORPORATION'S LINES, SYSTEM, OR WORKS TO A NEW TELE-  
42 PHONE CORPORATION.

43 (4) MAINTAINS OR IMPROVES THE QUALITY OF SERVICE TO TELEPHONE CORPO-  
44 RATION RATEPAYERS IN THE STATE.

45 (5) MAINTAINS OR IMPROVES THE QUALITY OF MANAGEMENT OF THE RESULTING  
46 TELEPHONE CORPORATION DOING BUSINESS IN THE STATE.

47 (6) IS FAIR AND REASONABLE TO AFFECTED TELEPHONE CORPORATION EMPLOY-  
48 EES, INCLUDING BOTH UNION AND NONUNION EMPLOYEES.

49 (7) IS FAIR AND REASONABLE TO THE MAJORITY OF ALL AFFECTED TELEPHONE  
50 CORPORATIONS.

51 (8) IS BENEFICIAL ON AN OVERALL BASIS TO STATE AND LOCAL ECONOMIES AND  
52 TO THE COMMUNITIES IN THE AREA SERVED BY THE RESULTING ENTITY AND DOES  
53 NOT ALLOCATE SUBSTANTIALLY UNFUNDED PENSION OR HEALTH CARE OBLIGATIONS  
54 OR OTHER EMPLOYEE BENEFITS TO A RESULTING TELEPHONE CORPORATION.

1 (9) PRESERVES THE JURISDICTION OF THE COMMISSION AND THE CAPACITY OF  
2 THE COMMISSION TO EFFECTIVELY REGULATE AND AUDIT TELEPHONE CORPORATION  
3 OPERATIONS IN THE STATE.

4 (10) PROVIDES MITIGATION MEASURES TO PREVENT SIGNIFICANT ADVERSE  
5 CONSEQUENCES WHICH MAY RESULT.

6 (11) DOES NOT ADVERSELY AFFECT COMPETITION. IN MAKING THIS FINDING,  
7 THE COMMISSION SHALL REQUEST AN ADVISORY OPINION FROM THE ATTORNEY  
8 GENERAL REGARDING WHETHER OR NOT COMPETITION WILL BE ADVERSELY AFFECTED  
9 AND WHAT MITIGATORY MEASURES COULD BE ADOPTED TO AVOID ANY SUCH ADVERSE  
10 EFFECT.

11 (E) WHEN REVIEWING A MERGER, ACQUISITION, OR TRANSFER OF CONTROL  
12 PROPOSAL, THE COMMISSION SHALL CONSIDER REASONABLE ALTERNATIVES OR  
13 MODIFICATIONS TO THE PROPOSAL RECOMMENDED BY OTHER PARTIES, INCLUDING NO  
14 MERGER, ACQUISITION, OR CONTROL, TO DETERMINE WHETHER OR NOT COMPARABLE  
15 SHORT-TERM AND LONG-TERM ECONOMIC SAVINGS CAN BE ACHIEVED THROUGH OTHER  
16 MEANS WHILE AVOIDING THE POSSIBLE ADVERSE CONSEQUENCES OF THE PROPOSAL.

17 (F) THE PERSON OR CORPORATION SEEKING ACQUISITION OR CONTROL OF A  
18 TELEPHONE CORPORATION ORGANIZED AND DOING BUSINESS IN THIS STATE SHALL  
19 HAVE BEFORE THE COMMISSION THE BURDEN OF PROVING BY A PREPONDERANCE OF  
20 THE EVIDENCE THAT THE REQUIREMENTS OF PARAGRAPH (D) OF THIS SUBDIVISION  
21 ARE MET.

22 (G) IN DETERMINING WHETHER OR NOT AN ACQUIRING TELEPHONE CORPORATION  
23 HAS GROSS ANNUAL REVENUES EXCEEDING THE AMOUNT SPECIFIED IN PARAGRAPH  
24 (D) OF THIS SUBDIVISION, THE REVENUES OF THAT TELEPHONE CORPORATION'S  
25 AFFILIATES SHALL NOT BE CONSIDERED, UNLESS THE AFFILIATE IS TO BE  
26 UTILIZED FOR THE PURPOSE OF EFFECTING SUCH MERGER, ACQUISITION, OR  
27 CONTROL.

28 (H) SUBPARAGRAPHS ONE AND TWO OF PARAGRAPH (D) OF THIS SUBDIVISION  
29 SHALL NOT APPLY TO THE FORMATION OF A HOLDING COMPANY.

30 (I) SUBPARAGRAPHS ONE AND TWO OF PARAGRAPH (D) OF THIS SUBDIVISION  
31 SHALL NOT APPLY TO ACQUISITIONS OR CHANGES IN CONTROL THAT ARE MANDATED  
32 BY EITHER THE COMMISSION OR THE LEGISLATURE.

33 S 3. Section 100 of the public service law, as amended by chapter 446  
34 of the laws of 1998, is amended to read as follows:

35 S 100. Transfer and ownership of stock. 1. No telegraph corporation or  
36 telephone corporation, domestic or foreign, shall hereafter purchase  
37 [or], acquire, take, or hold any part of the capital stock of any tele-  
38 graph corporation or telephone corporation organized or existing under  
39 the laws of this state unless authorized so to do by the commission.

40 2. Save where stock shall be transferred or held for the purpose of  
41 collateral security, no stock corporation, domestic or foreign, other  
42 than a telegraph corporation or telephone corporation, shall, without  
43 the consent of the commission, purchase [or], acquire, take, or hold  
44 more than ten [per centum] PERCENT of the voting capital stock issued by  
45 any telegraph corporation or telephone corporation organized or existing  
46 under or by virtue of the laws of this state. Any corporation now  
47 lawfully holding a majority of the voting capital stock of any telegraph  
48 corporation or telephone corporation may, without the consent of the  
49 commission, acquire and hold the remainder of the voting capital stock  
50 of such telegraph corporation or telephone corporation[, ] or any portion  
51 thereof.

52 3. (A) No consent shall be given by the commission to the acquisition  
53 of any stock in accordance with this section unless it shall have been  
54 shown that such acquisition is in the public interest [; provided,  
55 however, that any], WHICH THE COMMISSION SHALL DETERMINE BY FINDING THAT

1 THE PROPOSAL DOES ALL OF THE FOLLOWING, TO THE EXTENT DETERMINED TO BE  
2 APPLICABLE:

3 (I) PROVIDES SHORT-TERM AND LONG-TERM ECONOMIC BENEFITS TO RATEPAYERS.

4 (II) EQUITABLY ALLOCATES, WHERE APPLICABLE AND WHERE THE COMMISSION  
5 HAS RATEMAKING AUTHORITY, THE TOTAL SHORT-TERM AND LONG-TERM FORECASTED  
6 ECONOMIC BENEFITS, AS DETERMINED BY THE COMMISSION, OF THE PROPOSED  
7 ACQUISITION, PURCHASE, SALE, TRANSFER, OR RETENTION BETWEEN SHAREHOLDERS  
8 AND RATEPAYERS. RATEPAYERS SHALL RECEIVE NOT LESS THAN FORTY PERCENT OF  
9 THOSE BENEFITS.

10 (III) MAINTAINS OR IMPROVES THE FINANCIAL CONDITION OF THE RESULTING  
11 TELEPHONE CORPORATIONS DOING BUSINESS IN THE STATE AND DOES NOT UNREA-  
12 SONABLY ALLOCATE A TELEPHONE CORPORATION'S DEBT TO A DIVESTITURE ENTITY  
13 CREATED FROM AN EXISTING TELEPHONE CORPORATION. FOR THE PURPOSE OF THIS  
14 SECTION, A DIVESTITURE ENTITY IS A BUSINESS ENTITY CREATED BY THE  
15 ASSIGNMENT, EXCHANGE, SALE, OR OTHER TRANSFER OF SOME OR ALL OF AN  
16 EXISTING TELEPHONE CORPORATION'S LINES, SYSTEM, OR WORKS TO A NEW TELE-  
17 PHONE CORPORATION.

18 (IV) MAINTAINS OR IMPROVES THE QUALITY OF SERVICE TO TELEPHONE CORPO-  
19 RATION RATEPAYERS IN THE STATE.

20 (V) MAINTAINS OR IMPROVES THE QUALITY OF MANAGEMENT OF THE RESULTING  
21 TELEPHONE CORPORATION DOING BUSINESS IN THE STATE.

22 (VI) IS FAIR AND REASONABLE TO AFFECTED TELEPHONE CORPORATION EMPLOY-  
23 EES, INCLUDING BOTH UNION AND NONUNION EMPLOYEES.

24 (VII) IS FAIR AND REASONABLE TO THE MAJORITY OF ALL AFFECTED TELEPHONE  
25 CORPORATIONS.

26 (VIII) IS BENEFICIAL, ON AN OVERALL BASIS, TO STATE AND LOCAL ECONO-  
27 MIES, AND TO THE COMMUNITIES IN THE AREA SERVED BY THE RESULTING ENTITY  
28 AND DOES NOT ALLOCATE SUBSTANTIALLY UNFUNDED PENSION OR HEALTH CARE  
29 OBLIGATIONS OR OTHER EMPLOYEE BENEFITS TO A RESULTING TELEPHONE CORPO-  
30 RATION.

31 (IX) PRESERVES THE JURISDICTION OF THE COMMISSION AND THE CAPACITY OF  
32 THE COMMISSION TO EFFECTIVELY REGULATE AND AUDIT TELEPHONE CORPORATION  
33 OPERATIONS IN THE STATE.

34 (X) PROVIDES MITIGATION MEASURES TO PREVENT SIGNIFICANT ADVERSE CONSE-  
35 QUENCES WHICH MAY RESULT FROM SUCH ACQUISITION.

36 (XI) DOES NOT ADVERSELY AFFECT COMPETITION. IN MAKING THIS FINDING,  
37 THE COMMISSION SHALL REQUEST AN ADVISORY OPINION FROM THE ATTORNEY  
38 GENERAL REGARDING WHETHER OR NOT COMPETITION WILL BE ADVERSELY AFFECTED  
39 AND WHAT MITIGATORY MEASURES COULD BE ADOPTED TO AVOID ANY SUCH ADVERSE  
40 EFFECT.

41 (B) ANY such consent, HOWEVER, shall be deemed to be granted by the  
42 commission ninety days after such corporation applies to the commission  
43 for its consent, unless the commission, or its designee, determines and  
44 informs the applicant in writing within such ninety day period that the  
45 public interest requires the commission's review and its written  
46 consent. Nothing [herein] IN THIS SECTION contained shall be construed  
47 to prevent the holding of any stock heretofore lawfully acquired, nor to  
48 prevent, upon the surrender or exchange of such stock pursuant to a  
49 reorganization plan, the purchase, acquisition, taking, or holding of a  
50 proportionate amount of stock of any new corporation organized to take  
51 over, at foreclosure or other sale, the property of any corporation  
52 whose stock has been thus surrendered or exchanged[;], but the propor-  
53 tion of the voting capital stock of the new corporation held by a stock  
54 corporation and acquired by it by any such surrender or exchange of  
55 stock shall not without the consent of the commission exceed the propor-  
56 tion of the voting capital stock held by it in the former corporation.

1 Every contract, assignment, transfer, or agreement for transfer of any  
2 stock by or through any person or corporation to any corporation in  
3 violation of any provision of this chapter shall be void and of no  
4 effect, and no such transfer or assignment shall be made upon the books  
5 of any such telegraph corporation or telephone corporation[,] or shall  
6 be recognized as effective for any purpose.

7 S 4. This act shall take effect on the one hundred twentieth day after  
8 it shall have become a law; provided that any and all rules and regu-  
9 lations and any other measures necessary to implement any provision of  
10 this act on its effective date may be promulgated and taken, respective-  
11 ly, on or before the effective date of such provision.